Cochin Civil Procedure Code Amendment Bill.

Mr. T. S. Narayana Ayyar.—Sir, I beg leave to present to the Council the Select Committee Report on the Bill to amend the Cochin Code of Civil Procedure. The Select Committee has in the main followed the Travancore Code of Civil Procedure and has also drawn from the British Code and made certain changes. All the same we have mainly followed the Travancore Code, with certain changes suitable for our State. There is no change so to speak in the main scheme. The Code is before the House. We have also divided the Code into sections and orders and rules. In this connection, I may bring to the notice of the House that there is a dissenting minute of a few members with regard to our retaining Section 403 of the Civil Procedure Code. That section is, as this House may be aware, as regards the presentation of applications to the court by the applicants in person in suits by paupers. The Members of the dissenting note seem to think that it is an unnecessary provision and that therefore it may be omitted. But I may bring to the notice of the House that it is not a light provision which can be disregarded in the way proposed. This House may be well aware that this provision existed in the Code of 1859 before the Chartered High Courts came into existence. There, I may as well point out, it was not only the women who were not attending in courts on account of their social customs and manners, who were given the privilege of presenting these suits in courts through their agents but also persons who were sick. In the Code of 1882 the British Indian Legislature even negatived the right to the sick and insisted upon the presentation of all suits and appeals by the party in person or in exceptional cases through their agents. I may as well submit to the House that with regard to the Code of 1882 in the matter of presentation of appeals certain difficulties arose. In one of the early cases, I think it is in I. L. R. 8-Madras, the Madras High Court said that even with regard to appeals the presentation ought to be in person. But 18 years afterwards, in 26-Madras, the learned Judges were not quite agreeable to the course that was suggested in 8-Madras and they held that on a strict grammatical construction of the section it would be enough if the appeal be presented by a pleader. In 1908 this matter received the attention of the Legislature of British India and they set at rest this difference. They really went back and adopted the ruling in 8-Madras by enacting that even with regard to appeals the presentation ought to be in person. Travancore has also adopted the same law. And we have also sought to introduce the same law in our code.

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There is no reason why that wholesome rule ought to be departed from. The principle seems to be that, when an original suit is filed *in forma pauperis* the power to examine the party, when it is presented in person and if he is not present in person the agent or the *muktiar* who presents the petition, should be with the court, so that the Judge, if he thinks fit, may examine them touching the merits of the claim and the property of the applicant before the opponent is brought in the arena of litigation and put to irreparable loss. It is a salutary provision that is absolutely necessary and in one of the old cases I find that even a pleader cannot present such a suit, as the agent must be a person who should be able to swear and answer the court. It is not an idle provision. It is absolutely necessary to safeguard other interests. Hence the provision in the Code for personal presentation, which exists in British India for over 3/4 of a century. With these remarks I beg to move that the Bill as reported by the Select Committee, be taken into consideration.

Mr. T. K. Krishna Menon.—I beg to second it.

President.—Mr. Seethi's amendments.

Mr. K. Mohammed Seethi.—Sir, my amendment relates to Order 33.

Mr. K. P. Kannan Nayar.—Where is the amendment ?

President.—The amendment is, 'in Order 33 Rule 3 omit the words 'unless he is exempted from appearing in Court in which case the application may be presented" and add the words "or" before the words 'by an authorised agent." And in rule 4 of the same order to omit the words "when the applicant is allowed to appear by agent."

Mr. K. Mohammed Seethi.—Sir, this amendment relates to the subject adverted to by the Hon'ble Member for Law in the latter part of his speech viz., the presentation of suits and appeals by paupers. I am one of those Members of the Select Committee of the Civil Procedure Code who sent a dissenting note on this subject. Our reasons we have stated in the separate note that we have submitted along with the main report of the Select Committee. Sir, from what I heard from the Hon'ble Member for Law I understood him to say that there is a necessity for the court to ascertain the bonafides of a plaint or appeal presented by a pauper. That fact is conceded by the Members who signed the separate note. But the purpose of the section is not attained or sought to be attained in actual practice was the point that was maintained by the Members who signed the separate note. The House may understand the practice that obtains at present in pursuance of this section regarding presentation of suits and appeals by paupers. The practice is this:—A suit or appeal is presented by a pauper to the ministerial officer of the court and not to the presiding officer. Present-

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ation is never made to the Judge but is made like any other plaint or appeal to the Sheristadar, Head clerk or the Registrar of the court as the case may be and received as such. Therefore, at the time of presentation the Judge does not get an opportunity to go into the bonafides of the suit or appeal. So the salutary object which the Hon'ble Member for Law referred to is not served at all. After receiving the plaint or the appeal, if the court thinks that there is any necessity for examining the plaintiff or the appellant, the court has ample opportunities to get at the party either by calling upon the party to be present in court on a certain day or by sending out a commission for his or her examination. There is nothing preventing such a course if the court is inclined to think that there is a necessity to ascertain the bonafides afterwards. If that object is not sought to be achieved by the court at the time of presentation, where is the necessity for this provision? This was the line of reasoning adopted by the Members who signed the separate note and I do not find any satisfactory answer thereto in the speech of the Hon'ble Member for Law. In my amendment which I have just now sent, I do not ask for a total omission of this clause. I have stated that either the party or his duly authorised agent who will be able to answer all the questions which might be answered by the party, if we were present in court, should be present. What makes the difference is this. According to the section, as it stands now, it is only in exceptional cases that a party will be exempted from attendance. The amendment removes the hardship caused thereby.

Mr. K. P. Kannan Nayar.—Are you referring to rule 3?

Mr. K Mohammed Seethi.—Yes, my amendment is in rule 3. "Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person". My amendment begins from there. Unless he is exempted from appearing in court in which case the application may be presented", those words should be omitted, and then you may insert "or" and then read the section as it is. "Or by an authorised agent who can answer all material questions relating to the application and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person". So the object which the court has in view in insisting upon personal attendance of a party, while presenting an appeal or suit, will very well be served because the presence of an agent of the party who will be able to answer all the questions that may be asked to the party himself will be as good as the presence of

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the party. So the point sought to be achieved by the separate note is also served by this amendment.

Then the other amendment is a consequential one being necessary by the amendment which I proposed to rule 3, and that is in rule 4 of the same order. The words "when the applicant is allowed to appear by agent", may be omitted. The section will now read "where the application is in proper form and duly presented, the court may, if it thinks fit, examine the applicant, or his agent regarding the merits of the claim and the property of the applicant". Those are the two amendments which I propose to Rules 3 and 4 of Order 33. I submit that these amendments are only reasonable and that will save much trouble to that section of litigant public who do not deserve a penalty for their proverty.

Mr. C. J. Mathew.—I beg to second the amendments.

Mr. V. K. Kochunni menon.—I oppose the amendments. The object of the amending Bill is to bring our law into line with that of British India and the present rule is exactly the same as that of British India. The object of the provision is apparently to enable the Judge to dispose of the application, even on certain questions of fact, before issuing notice to the defendant and thereby avoid unnecessary costs to the latter. The chief reason given for the amendment is that according to the present practice such applications are presented to a ministerial officer and not to the Judge and that no useful purpose is therefore served by the provision. If the practice is not in conformity with law it is the practice that has to be changed and not the law. Under the Code an ordinary plaint may be presented to the court or any officer appointed by the court but not so an application for a pauper suit or appeal. In the interests of the defendant, therefore I think the amendment should be disallowed.

Mr. C. A. Kunjunni Raja.—I support the amendments. Persons exempted from appearance in courts are allowed to present petitions *in forma pauperis* by their agents. Persons who are not exempted are now penalised and have to appear in person under that rule. In practice what generally takes place on presenting a petition under that section is this: the petition is first presented by the pauper in person to the chief ministerial officer and notice is then issued by the court to the counter-petitioners and the Sirkar and on the day of the hearing there is an examination when the opposing party also appears. It is rare the petitioner is examined on the date of the presentation of the petition. Undoubtedly the law is to the effect that the pauper may be examined on the very day on which the petition is put in. I do not think any useful purpose

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will be served by such examination by a court which is not aware of anything about the applicant or the agent. A useful examination can be conducted only when the opposite party appears with all the necessary materials for cross-examination. The presentation of the petition need not be by the applicant; the vakil may do it. Why should a privilege, given to those who are exempted from appearance, be not extended to others who may not be able to appear in courts? To cite an instance Mohammadan ladies are generally averse to appear in courts. They will have to be dragged to the courts from the very beginning if this rule is to be enforced. Very little useful purpose is served by retaining this rule. For these reasons, I support the amendment.

Mr. A. B. Salem.—I also rise to support the amendment. I am one of those Members of the Select Committee who proposed the deletion of the provision for making paupers come to court to present their suit. You would see, Sir, that the rationale of the rules insisting on the presentation of suits and appeals in person is very difficult to get at. The suit is registered but is liable to be dismissed on the examination of the applicant subsequently. In the same order 33, rule 7 provides for the hearing of the application. "The court shall then either allow or refuse to allow the applicant to sue as a pauper or direct that the application be filed etc" So that, before the suit gets a hearing, if the court thinks it necessary, it can summon the party and the party shall come to the court or the suit is liable to be dismissed and the application rejected. Therefore, there is no possible reason, that I could see, to insist upon this rule, in spite of the learned Government Advocate's speech. I was inclined to think that, before we make this amendment, we should certainly think over the matter. I had a talk with the Government Advocate upon this very amendment when he said that the High Courts differed in their view with regard to the presentation of appeals by paupers. The Madras High Court wanted to give the privilege of the presentation of appeals by any one on behalf of paupers. Some other High Courts differed and the Legislature in India followed the other High Courts in making this provision again. But apart from the fact that that provision has been existing for a number of years, why such a provision is made cannot be understood even from the Big White Book. I am not convinced why such a provision should exist for the mere presentation of the suit or appeal, when as a matter of fact, no one is examined by the Judge when the petition is presented. We know as a matter of fact that when application is presented it is received by the officer in

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court and he gets a report from the Diwan Peishkar and Government and issues a notice. Witnesses are examined and application is granted or not granted. At that time the court can ask the party to be present. Otherwise, the application can be rejected. Therefore, there is no valid reason, which we can comprehend, given, for the provision to be retained and for the amendment not to be accepted. Therefore, I support this amendment.

Mr. M. K. Raman.—I also rise to support the amendment. I am also one of the signatories of the separate note. The only reason that I understood from the Hon'ble Law Member for retaining this provision is that this has been in existence for over half a century. That is exactly the reason, when we find that it is a useless provision which has been in existence for such a long time, that we should get rid of it. In fact it has been pointed out that no useful purpose is served by the retention of that provision. As soon as the pauper petition is filed, a suit is not registered. It is only a miscellaneous petition that is entertained by the court. Before it is accepted as a suit the Sirkar is also given a voice to see whether the applicant has any property and is able to pay court fees. All this is in a miscellaneous petition and it is decided then whether the party can pay court fee or not. These proceedings take place before the suit is registered and the party will be examined and all the pros and cons will be gone into and the Judge will decide whether he should be allowed to sue as a pauper. There is absolutely no use in this provision and not only there is no use, it puts a lot of difficulties in the case of certain communities whose customs do not permit their women to appear in public. There is such a real difficulty, and we can provide for that difficulty without any injury at all. As for the agreement that this provision was in existence for 70 years and has become a time honoured thing, I, for my part, may say that I do not have much regard for many of your time honoured customs. In fact I want to get rid of several such customs. Why should we blindly follow a thing because it was in existence for half a century or 70 years, if there is absolutely no necessity to keep it on. ' This provision in the Bill can easily be abolished and I pray the House will be unanimous to delete that provision.

Mr. V. V. Anantapadmanabha Ayyar.—I beg to support the amendment. The present practice is to file a suit before the Sheristadar or the head ministerial officer and he just receives the plaint and notice is given to the Sirkar and the opposite party ; the question whether the applicant is a pauper

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or not becomes the subject-matter for investigation only at a subsequent stage. Generally the pauper petitioner is not examined at the initial stage. It has been never my experience that the court has examined the petitioner at the initial stage. So, generally, what is being done in these things is to issue notice to the Sirkar and the opposite party. The opposite party will be in better position to say whether the petitioner is a pauper or not, and he will supply materials to the court. It is only at that stage that any investigation can be carried on. If the retention of this provision in our Code is simply on the ground that we have been following that from as early a time as 1852 and the British Indian Code has followed the same thing and the Travancore Code, also in my humble submission, that is no argument at all. Nor is the contention, that in VIII—Madras and XXVI—Madras the same rule has been acted upon, any argument that we should ratain it. VIII—Madras and XXVI —Madras only interpreted the Civil Pocedure Code as it then existed. We are going beyond those decisions. We are going to enact a new law. What we have to see is what should be the proper law, and not what is the law now. We should see whether this provision is in any way helpful to us, so far as the Civil Procedure Code is concerned. My submission is that the provision that a pauper petition should be presented in person is not at all helpful to the procedure in courts. We find, as a matter of fact, it has not been helping us. We put off the enquiry to a subsequent stage, when alone the petitioner is examined. Therefore my submission is that no useful purpose can be served by retaining this provision.

Mr. K. Ayyappan.—Having heard the discussion so far I could gather that two attitudes of mind are displayed here.—interpretatory mind and innovatory mind. Those of the interpretatory mind have interpreted the law as it is here or outside. We have no quarrel with their interpretation. But we are concerned now not with a law as it is but with a law as it ought to be. The question is whether the proposed amendment is needed now. The mover of the amendment has proved its necessity and the opponents, have nothing to say against it. I, therefore, support the amendment.

Mr. A. S. Harihara Ayyar.—I oppose the amendment. Always a good lawyer is a bad neighbour. And when a poor pauper is put in the hands of a legal adviser he is capable of doing more mischief. (*Hear, Hear*). And so the practice of the courts in not examining the applicant directly must be condemned and the right procedure ought to be followed and

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not change the substantive law and make it applicable to the pleaders.

Dr. A. R. Menon.—What is a substantive law ?

Mr A.S. Harihara Ayyar.—I committed a mistake there. (*Laughter*). I meant procedure. As I apprehend there are two sides of the question. As soon as the pauper application is presented, if the presiding officer is conscious, he will certainly examine on the merits of the case also, but in practice we seldom see that presiding officers exercising that right. As a matter of course, applications are being allowed and the party put to very hard task; he has to spend a lot of money before he succeeds in throwing out the case. But in all these the legislature expects that such evils should be put an end to and that is why the application ought to be presented in person.

Mr. T. S. Narayana Ayyar.—Sir, I wish to say a few words in reply to the criticisms levelled against my view, that the section ought to stand as it is. It is said, no doubt, that it is not usually put into practice and that petitioners are not examined and there is no necessity for the same. One Hon'ble Member even put it that the 'custom' of several years cannot be allowed to stand. I was never invoking any custom at all. The law was there for the last seventy-five years and further I submit that almost all the judges have said that this was a salutary provision.

Mr. K. Ayyappan.—Do you think that it is a salutary provision ?

Mr. T. S. Narayana Ayyar.—I do think that it is a salutary provision, otherwise I would not have opposed it. The real point is what exactly should be the law. In that view, I referred to the decisions of the several High Courts and I only meant to say that the wisdom of ages has not thought fit to change it even now. From 1859 to 1908 in British India and up to a couple of years ago in Travancore they thought and still think it a wise course to adopt. I do not for a moment submit that this House is not wiser. (*Laughter*). Far from it. What I submit is this. If we look into the reason, it does not warrant that it should be taken away. And when my learned friends on the opposite side expressed that this was not practicable, I have to say, I am not quite sure about that. In my recollection there have been cases where judges themselves have examined the party and that is the law also. Now if you will permit I will refer to the two sections of the Civil Procedure Code 405 and 408. They will show that it is almost imperative to examine the applicants. The right given to the opposite party at the

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time of hearing is quite different. Section 405 lays down that if the application be duly presented, the Judge may examine the petitioner or his agent &c. Now I may invite the attention of the House to Section 408 which runs thus:—

"On the day so fixed, as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party and *may cross-examine the applicant or his agent* and shall make a memorandum of the substance of their evidence. The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided the applicant is or is not subject to any of the prohibitions specified in Section 406.

The court shall then either allow or refuse to allow the applicant to sue as a pauper". That means that there is an examination by the Court under Section 405 amounting to an examination-in-chief which may be followed by a cross examination under Section 408. Because a certain provision is not observed at times, that is no justification for deleting that provision. My submission is that it is really land down as good law that the presentation ought to be in person except in the exceptional cases of gosha women, &c. So the reason for the change does not appear to me to be weighty.

Mr. K. Mohammed Seethi.—In reply to the Hon'ble Member for Law I may submit that my amendment obviates the difficulty which he contemplates viz., that the applicant will not be available for examination at the time of presentation. For even on the day that the application is presented it should be done "either by the applicant or by his duly authorised agent". The entire objection of the Hon'ble Member for Law will, therefore, disappear. Therefore I respectfully request all the Hon'ble Members to vote for the amendment.

President.—The motion before the House is that the Civil procedure Code Amendment Bill as reported by the Select Committee be taken into consideration.

Motion put and carried.

President.—The motion before the House is that the Civil Procedure Code Amendment Bill as reported by the Select Committee be amended, in Order XXXIII, Rule 3, by omitting the words "unless he is exempted from appearing in court in which case the application may be presented" and adding the word " or " before the words "by an authorised agent".

Motion put and carried.

President.—The motion before the House is that the section as amended shall stand part of the bill.

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" Notwithstanding anything contained in these rules, the application shall be presented to the court by the applicant in person, or by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.".

Question put and agreed to.

President.—The motion before the House is that in Rule 4 omit the words " when the applicant is allowed to appear by agent ".

Motion put and carried.

President.—The motion before the House is that the section as amended shall stand part of the Bill.

" where the application is in proper form and duly presented, the court may, if it thinks fit, examine the applicant, or his agent, regarding the merits of the claim and the property of the applicant ".

Question put and agreed to.

President.—The rest of the Bill may be taken to have been read in the House clause by clause.

All the clauses were put and agreed to. (*Vide Appendix*).

Mr. T. S. Narayana Ayyar.—Now, Sir, I beg to move that the Bill as reported by the Committee and as amended by the Council be taken up and passed on Friday, the 5th of December.

Mr. T. K. Krishna Menon.—I second it.

President.—The motion before the House is that the Civil Procedure Code as reported by the Committee and as amended by the Council be taken up and passed on Friday.

Motion put and carried.

Cochin Criminal Law Amendment Bill.

President.—The next item in the agenda is the Criminal Law Amendment Bill to be introduced by the Law Member.

Mr. T. S. Narayana Ayyar.—Sir, I move that the Bill further to amend the Cochin Penal Code, Regulation I of 1059 and the Code of Criminal Procedure, Regulation II of 1086, for a certain purpose, be read in Council.

Mr. T. K. Krishna Menon.—I second it.

Mr. T. S. Narayana Ayyar.—Sir, the certain purpose with which the Bill is concerned is to supply an apparent defect in the Penal Code, in as much as there is no provision there to make a deliberate and malicious act intended to outrage the religious feelings of any class of His Highness' subjects, by insulting its religion or religious feelings, penal. The form which is given in the Bill is the insertion of a new section 273A in the Penal Code, Regulation I of 1059. That section, Sir, I will read to the House. It runs as follows,

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